IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1160 OF 2003.

State of Maharashtra..... .....Appellant.
V/s
Dyandeshwar Mohan Jagtap & Ors..... .....Respondents.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

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Mr.B. R. Patil, PP for the appellant.

CORAM:V.G. PALSHIKAR
AND
ANOOP V. MOHTA, JJ.

27.10.2004

PC:

By this appeal the State questions the acquittal ordered by the learned trial Judge in Sessions Case No.105/2002. The accused faced trial for murdering his wife. As many as five dying declarations were recorded and formed part of evidence. The learned trial Judge has elaborately considered each of the dying declarations and has given valid and cogent reasons for its rejection. Particularly following observations of the learned trial Judge are noteworthy:

"After going through the evidence of Dr.Melita, fact remains that this witness does not know Marathi. Likewise, Suvarna was not knowing English. A question arises as to how and in what manner she concluded that she was well oriented. Unless Doctor puts question and patient answers, it cannot be said that the patient was oriented and was able to give statement. Dr.Melita, in evidence, stated nothing in what manner she could gather the orientation and ability of Suvarna to speak. Therefore, the evidence of Dr.Melita on the point of orientation of Suvarna is not free from doubt. So far as mental fitness and consciousness is concerned, much importance can not be attached to it in view of the recent judgment of the Hon'ble Supreme Court in the case of ***Laxman*** V. ***State of Maharashtra,*** reported in 2002 All MR (CRI) 259 (SC), Dr.Melita, in evidence, further stated that after recording the first dying declaration, she had examined Suvarna and found that she was conscious throughout and able to give statement. However, such endorsement at the bottom of first dying declaration is conspicuously missing. It means Dr.Melita deposed in the Court in a mechanical manner and it has not been explained as to why there is no endorsement at the bottom of first dying declaration at Ex.35."

2. It will thus be seen that the marshalling of facts by learned Judge is correct, application of law is correct, the reasons given for rejecting dying declarations are also correct. In such circumstances no case is made out for interference. Appeal dismissed.

27.10.2004